STATE OF MICHIGAN

COURT OF APPEALS

DAVID S. SEBASTIAN and BETTY S. SEBASTIAN,

Plaintiff-Appellees,

v

CITY OF EAST GRAND RAPIDS and EAST GRAND RAPIDS BOARD OF ZONING APPEALS,

Defendant-Appellants.

UNPUBLISHED
May 22, 2003

No. 237534
Kent Circuit Court
LC No. 00-001228-CZ

Before: Saad, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting plaintiffs' motion for summary disposition. We affirm.

Plaintiffs own two contiguous lots located at 1100 Cambridge (the "north parcel") and 1110 Cambridge (the "south parcel") in East Grand Rapids. Plaintiffs live in a residence on the north parcel. The south parcel has always been vacant. The lots were platted as separate lots in 1924, and are located in an A-1 zoning district.

The instant dispute arises out of plaintiffs' desire to sell the south parcel as a lot on which the buyer will be permitted to construct a residence. In April 1998, plaintiffs filed a request for a variance, apparently on the advice of the city building inspector. The variance request was sought because the south parcel was smaller than the 12,000 square-foot minimum area requirement for a lot in the A-1 district. The board denied the request in July 1998.

In November 1999, plaintiffs filed a second request for a variance, which contemplated moving the boundary line between the north and south parcels. Moving the boundary line would allow the north parcel to remain at more than 12,000 square feet, while increasing the south parcel from 10,482 square feet to 11,194 square feet. It would also allow for construction of a 50-foot by 50-foot residence on the south parcel, without violating the side-yard requirements of the zoning ordinance. The board denied that variance request on January 17, 2000.

Plaintiffs filed the instant complaint in district court on February 7, 2000. The complaint was eventually amended to state three causes of action: (i) count I sought a declaration that the

boundary line could be moved, and that moving the boundary line would obviate the need to obtain a variance to construct a residence on the south parcel; (ii) count II was an appeal of the board's denial of the second variance request; and (iii) count III contended the zoning ordinance was unconstitutional as applied to plaintiffs' property. Plaintiffs moved for summary disposition on count I. The trial court granted plaintiffs' motion, thereby ruling that plaintiffs could alter the boundary line and construct a residence without first obtaining a variance.

On appeal, defendants contend that the trial court lacked subject matter jurisdiction to rule on the complaint. We review de novo a question involving a circuit court's jurisdiction. *Sun Communities v Leroy Twp*, 241 Mich App 665, 668; 617 NW2d 42 (2000).

In *Davenport v City of Grosse Pointe Farms Zoning Bd of Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995), we ruled that a party has twenty-one days to appeal as of right to the circuit court after a zoning board's ruling on a variance request. We note that the date begins to run when the written order of the board is signed, rather than the date the board took the action. *Id.* at 404-405. Here, the evidence does not establish when the board signed a written order, if any, denying plaintiffs' second request for a variance.[1] Even if we were to assume that the board signed a written order on January 17, 2000, plaintiffs' complaint was, nevertheless, timely because it was filed on February 7, 2000. Accordingly, plaintiffs' appeal was timely. Consequently, the trial court did not err in rejecting defendants' challenge to its subject matter jurisdiction. *Sun, supra* at 668.

Defendants also contend that the trial court erred in granting plaintiffs' motion for summary disposition. We review de novo a trial court's ruling on a motion for summary disposition. *Haliw v Sterling Heights*, 464 Mich 297, 301; 627 NW2d 581 (2001). In reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), we consider "the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion." *Id.* at 302. "Summary disposition may be granted if the evidence demonstrates that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id.*

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[1] Defendants cite no authority supporting their position that the relevant date for determining the timeliness of plaintiffs' appeal was the denial of their first request for a variance, even if we were to conclude that the second variance request was essentially a reformulation of the first request. Accordingly, we deem that issue abandoned. We note that the defendant in *Krohn v Saginaw*, 175 Mich App 193, 195; 437 NW2d 260 (1988), had pursued two unsuccessful variance requests before the planning commission approved a third request. This Court viewed the date of the decision rendered after the last request as the relevant date for determining the timeliness of an appeal to the circuit court. See *id.* at 195-197. While it is true that this Court in *Krohn* found it unnecessary to discuss whether the planning commission had the authority to consider the third (amended) request, the fact remains that the defendants have not pointed to any authority precluding a zoning board from considering multiple and somewhat duplicative variance requests.

In *Warren's Station v City of Bronson*, 241 Mich App 384, 388; 615 NW2d 769 (2000), we recognized that the rules of statutory construction apply to the construction of ordinances. We further opined as follows:

> [T]he primary goal of the interpretation of ordinances is to give effect to the intent of the legislative body. We must first examine the specific language used by the legislative body in the ordinance. If the plain and ordinary language is clear, then judicial construction is normally neither necessary nor permitted. We review a lower court's interpretation of the meaning of an ordinance de novo. [*Id.* (citations omitted).]

As noted above, we review de novo legal issues. *Sun Communities, supra* at 668.

Defendants contend that, under the zoning ordinance, plaintiffs could not re-divide the north and south parcels without first obtaining the East Grand Rapids city commission's approval. Defendants note that § 5.406(A) of the zoning ordinance provides that "[n]o platted lot shall be split or divided or combined with another lot, nor shall the boundary of a platted lot be altered, unless approved beforehand by the city commission . . . ." Plaintiffs rely on § 5.23, which provides as follows: "Any lot or lots in common ownership . . . may be divided, altered, or reduced if said area or dimension as divided, altered or reduced meets the minimum requirements of this chapter."

The trial court found that § 5.406(A) conflicted with § 5.23, and harmonized the two provisions by construing § 5.406(A) to only apply to platted lots that are not in common ownership.[2] Thus, the trial court ruled that because plaintiffs owned both the north and south parcels, they could alter the boundary lines of the platted lots pursuant to § 5.23 without running afoul of § 5.406(A).

Indeed, § 5.23 provides that *any* lots in common ownership may be altered, while § 5.406(A) states that platted lots may not be altered without city approval. Thus, where, as here, a platted lot is in common ownership, § 5.23 would allow for alteration without prior approval, whereas § 5.406(A) would require city approval. If city approval were required, as requested by defendants, then § 5.23 would be negated; conversely, allowing for alteration without city approval would negate § 5.406(A). We agree with the trial court's conclusion that the two ordinances were in conflict—at least as they related to the instant matter.

Courts must, "if reasonably possible," harmonize conflicting statutes by construing them in a manner to "give meaning to each." *Nowell v Titan Ins Co*, 466 Mich 478, 483; 648 NW2d 157 (2002). This rule applies to the construction of ordinances. *Warren's Station, supra* at 388.

Here, the trial court harmonized the two conflicting ordinances by reading § 5.406(A) to not apply to platted lots in common ownership. Alternatively, the trial court could have

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[2] Defendants contend that the trial court's construction improperly modified § 5.406(A), even though the ordinance was not ambiguous. However, the trial court never concluded that § 5.406(A) was ambiguous; instead, the trial court found that § 5.406(A) conflicted with § 5.23. Thus, defendants' argument is plainly without merit.

construed § 5.23 to not apply to platted lots. However, this approach would have negated the word "any" in § 5.23. It is well established that courts should avoid constructions that render ordinance language nugatory. See *Flint City Council v State*, 253 Mich App 378, 394; 655 NW2d 604 (2002); *Warren's Station, supra* at 388. In contrast, the trial court's construction merely required construing § 5.406(A) as an exception to the general rule of § 5.23. Accordingly, we reject defendants' contention of error. Consequently, plaintiffs could alter the boundary lines of their commonly-owned, platted lots without city approval.

Defendants also contend that the trial court erred in ruling that the parcels could be re-divided because the south parcel would still not meet the minimum requirements of the zoning ordinance. As noted above, § 5.23 only allows lots in common ownership to be divided or altered if the resulting lots meet the minimum requirements of the zoning ordinance.

Section 5.82 of the zoning ordinance provides that the area regulations are specified for by residential zone. For example, the A-1 zoning district requires a lot area of at least 12,000 square feet, § 5.133(E), and the A-2 zoning district requires a lot area of at least 7,200 feet, § 5.123(E). There are several exceptions to § 5.82; one of the exceptions is in subsection (C)(1), which provides as follows:

> C. In any district in which single-family dwellings are permitted notwithstanding other limitations, restrictions or permissive uses designated by this chapter, a single-family dwelling and customary accessory building which is erected on any platted lot, or combination of one (1) or more platted lots, or parts of such lots after September 1, 1962, shall meet the following requirements:
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> 1. Substandard lots: For lots or combinations of lots located in A-1 or A-2 zone districts having a total area less than the area requirements in the zone district in which such lots are located, but having a total area at least equivalent to that required in the next lower zone district, yard requirements shall be enforced in accordance with the requirements of the zone district in which said lots are situated. For lots or combinations of lots in A-1 or A-2 zone districts having a total area less than the area required in the next lower zone district not meeting the area required in the next lowest district . . . not more than twenty-five (25) percent of the land constituting the construction site shall be occupied by buildings, both primary and accessory, and the yard requirements of the zone district in which the site is located shall be met.

The trial court ruled that § 5.82(C)(1) allows a single-family home to be built on a lot in A-1 district if it does not satisfy the area requirements of § 5.133(E), but satisfies the area requirements of § 5.123(E) and the side yard requirements in § 5.133(C).[3] Thus, the trial court essentially ruled that the parcels could be re-divided because a residence could be constructed in compliance with § 5.82(C)(1), even though the south parcel did not exceed 12,000 square feet.

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[3] The A-1 zoning district requires two side yards totaling at least 24 feet, with no side yard less than ten feet. Section 5.133(C).

We agree with the trial court's ruling that § 5.82(C)(1) creates an exception to § 5.133(E) for *substandard lots*—those lots which satisfy the side-yard requirements of the district, satisfy the area requirements of the next lower district, and comply with the twenty-five percent maximum amount of building space.[4] Here, if the boundary line is altered, as proposed by plaintiffs, the south parcel would satisfy both § 5.133(C) and § 5.123(E), as necessary to be a buildable lot under § 5.82(C)(1) of the ordinance. Moreover, the proposed residence would be 2,500 square feet, less than twenty-five percent of the 11,194 square feet on the lot, as necessary to further comply with § 5.82(C)(1). Consequently, we reject defendants' contention of error.

Defendants also argue that plaintiffs do not have a substandard lot under § 5.82(C)(1) because of § 5.44(D) of the zoning ordinance. Section 5.44(D), the "merger clause," requires combining the north and south parcels to determine whether a parcel satisfies the area requirements of a residential district. Defendants contend that the south and north parcels add up to approximately 23,000 square feet—more than the 12,000 square foot requirement under § 5.133(E), thereby preventing the south parcel from being a substandard lot. However, we agree with plaintiffs' contention that the south parcel is a substandard lot, as defined by § 5.82(C)(1), notwithstanding the merger clause's impact, if any, on the south parcel's status as a conforming or non-conforming lot. Therefore, we conclude that the trial court did not err in granting plaintiffs' motion for summary disposition. *Haliw, supra* at 301-302.

Finally, defendants contend that plaintiffs should not have prevailed below because their purported hardship was self-created. In *Johnson v Robinson Twp*, 420 Mich 115, 117-127; 359 NW2d 526 (1984), our Supreme Court reinstated a zoning board's denial of a variance request because the party requesting the variance had created the need for the variance by splitting a lot into three nonconforming lots after the relevant ordinance was enacted.

However, we agree with the trial court's conclusion that, under the zoning ordinance, plaintiff did not need to obtain a variance. As such, there was no hardship—self-created or otherwise. Moreover, plaintiffs' challenge to the variance denial was not decided below. Accordingly, the *Johnson* decision is both factually and legally distinguishable. Consequently, defendants' final contention of error is without merit.

Affirmed.

/s/ Henry William Saad
/s/ Patrick M. Meter
/s/ Donald S. Owens

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[4] Defendants contend that the trial court's construction of § 5.82(C)(1) would render the area requirements of § 5.133(E) "meaningless." However, to whatever extent § 5.82(C)(1) renders § 5.133(E) meaningless, it is because of the language in the ordinance and not the trial court's construction of that language. Regardless, because of the twenty-five percent maximum, we reject defendants' contention that the 12,000 square foot requirement was rendered meaningless. Instead, the 12,000 minimum lot size still applies where a property owner desires a residence that exceeds twenty-five percent of the lot size.